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OFFICE OF PETITIONS

In re Application of
Fushiki et al.
Application No. 09/367,481
Filed: August 13, 1999
Attorney Docket No. 35859.1

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed May 10, 2001, to revive the above-identified application.

This petition is hereby Dismissed.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** final agency action within the meaning of 5 U.S.C. §704.

This above-identified application became abandoned for failure to timely file a proper reply within the meaning of 37 CFR 1.113 to the final Office Action of June 28, 2000. The final Office Action set a three (3) month shortened statutory period for reply. An amendment filed on September 5, 2000 did not place the application in condition for allowance. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on September 29, 2000. A Notice of Abandonment was mailed on January 26, 2001.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03 (c)(III)(C) and (D).

The instant petition lacks item (1) the required reply. The proposed reply required for consideration of a petition to revive after a final Office Action must be a Notice of

Appeal (and appeal fee required by 37 CFR 1.17(b)), an amendment that prima facie places the application in condition for allowance, the filing of a continuing application or a Request for Continued Examination (RCE). See MPEP 711.03(c)(III)(A)(2) and 37 CFR 1.114. Although Petitioner submitted an amendment with the instant petition, the examiner has determined the amendment does not place the application in condition for allowance. Accordingly, this application cannot be revived.

Further Correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
 Box DAC
 WASHINGTON, D.C. 20231

By facsimile: (703) 308-6916
 Attn: Office of Petitions

By hand: Office of Petitions
 2201 South Clark Place
 Crystal Plaza 4, Suite 3C23
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Telephone inquiries concerning this matter should be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251.

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